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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/823,228	04/13/2004	Joel a. Luckman	US20030472	4624

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EXAMINER	
WALDBAUM, SAMUEL A	

ART UNIT	PAPER NUMBER
1792	

MAIL DATE	DELIVERY MODE
03/26/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/823,228	LUCKMAN ET AL.	
	Examiner	Art Unit	
	SAMUEL A. WALDBAUM	1792	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *02 July 2007*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *28-42* is/are pending in the application.

4a) Of the above claim(s) *31 and 35* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *28-30,32-34 and 36-42* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *13 April 2004* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *4/13/04, 7/30/07*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of the apparatus claims 28-42 in the reply filed on July 2, 2007 is acknowledged.

2. Claims 31 and 35 withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected dishwasher and oxidizing agent in the sump, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on July 2, 2007.

3. Applicant further cancelled claims 1-27 in the reply filed July 2, 2007.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 41 and 42 are rejected under 35 U.S.C. 102(b) as being anticipated by Hamand (U.S. pgpub. 2002/0166177, hereafter `177).

5. Claims 41 and 42: `177 teaches a wash zone (fig. 1 part 15, [0016]) a water supply line (fig. 1, [0020]), a hydrogen peroxide generator, hence an chemical oxidizing generator (fig. 1, part 110, [0020]) and a conduit leading from the generator to the wash zone (fig. 1, part 120, [0020]-[0023]).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 28-30, 32-34, 36-37 and 39-40 rejected under 35 U.S.C. 103(a) as being unpatentable over Hamand (U.S. pgpub. 2002/0166177) in view of Pastryk et al (U.S. 5,345,637, hereafter `637).

8. Claim 28: See claim 41 above. `177 does not disclose the dispenser or a sump in the washing machine. `637 is a washing machine. `637 teaches a sump (fig. 2, part 50) and fluid dispensers (fig. 1, parts 86 and the end of conduit 48). These are standard components on a washing machine. All of the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, and the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention, meaning that the fluid dispensers and sump

taught by `637 in apparatus `177 to yield the predictable result of dispensing the incoming fluid and collecting the fluid from the wash tub.

9. Claim 29: Claims directed to apparatus must be distinguished form prior art in terms of structure rather than function. *In re Danly*, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA). "[A]pparatus claims cover what a devices is not what a device does" *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990), meaning what items `177 is washing is not relevant as long as `177 is capable of washing fabrics ([0015]-[0017]).

10. Claim 30: `177 teaches a agitation means (fig. 1, part 17, [0016]).

11. Claim 32: `177 teaches that the basket and agitator are rotatable ([0016] hence it impart mechanical energy on the load).

12. Claim 33: `177 does not teach a heater. `637 teaches a heater in a conduit or a sump (col. 5, lines 1-25) to increase temperature in washing fluid (col. 5, lines 1-25). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have included a heater as taught by `637 in apparatus `177 to have raised the temperature of the washing fluid.

Claims directed to apparatus must be distinguished form prior art in terms of structure rather than function. *In re Danly*, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA). "[A]pparatus claims cover what a devices is not what a device does" *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990), means as to when the oxidizing agent is added as described by `177 does not structural limitation, since it is limitation as to what something is doing.

13. Claim 34: `177 teaches that the agent flows in to the basket (fig. 1, part 120, [0020]-[0023]). `177 does not teach the location where the pipe enters the washing chamber, but that the oxidizing agent interacts with the laundry ([0024]). All of the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, and the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention, meaning that the dispensing of the bleach can be dispense in the lower region of the wash zone, to yield the predictable result of the bleach/oxidizing agent to interact with the laundry as taught by `177.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to place the oxidizing dispensing unit in the lower region of the wash zone, since it has been held that rearranging parts of an invention involves only routine skill in the art. In re Japikse, 86 USPQ 70.

14. Claims 36 and 37: `177 teaches hydrogen peroxide ([0020]). Claims directed to apparatus must be distinguished form prior art in terms of structure rather than function. *In re Danly*, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA). "[A]pparatus claims cover what a devices is not what a device does" *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990), meaning the amount of hydrogen peroxide entered in the machine is how the oxide is being used in the wash fluid, as `177 teaches generating hydrogen peroxide.

15. Claims 39 and 40: `177 teaches the use of a electrochemical cell for dissociating water by the means of electrolysis ([0010]-[0012], where voltage is added to the electrochemical cell to create different peroxide concentrations, hence electrolysis is occurring).

Claim 38 rejected under 35 U.S.C. 103(a) as being unpatentable over Hamand (U.S. pgpub. 2002/0166177) in view of Pastryk et al (U.S. 5,345,637) as applied to claim 36 above further in view of Scheper et al (U.S. pagpub 2003/0216271, hereafter `271) and De Souza (U.S. pgpub. 2002/0189975, hereafter `975).

`177 and `637 teaches all the limitations of claim 36.

16. Claim 38: `177 teaches chemically treating a surface in the washing machine with a manganese to activate the hydrogen peroxide ([0008], [0024]-[0026]). `177 does not teach that hydroxyl radicals are formed. `271 is solving the same problem as the applicants of decomposing hydrogen peroxide. `271 teaches that iron and manganese decompose hydrogen peroxide ([0174]). `975 is solving the same problem as the applicant as to what hydrogen peroxide decomposes into hydroxyl radicals when interacting with a catalyst. `975 teaches that hydrogen peroxide decomposes into hydroxyl radicals when interacting with iron [0079]. All of the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, and the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention, meaning that the surface treatment as taught by `177 where the catalyst is iron as taught by `271 and `975 to yield the predictable result of the hydrogen peroxide decomposing into hydroxyl radicals.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SAMUEL A. WALDBAUM whose telephone number is (571)270-1860. The examiner can normally be reached on M-TR 6:20-3:50, F 6:30-10:30 est.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Cleveland can be reached on 571-272-1418. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/S. A. W./
Examiner, Art Unit 1792

/FRANKIE L. STINSON/
Primary Examiner, Art Unit 1792